



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,474	08/19/2005	Robert Farrer Gilmour	07EW-119688	8913
30764 7590 09/04/2008 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP 333 SOUTH HOPE STREET 48TH FLOOR LOS ANGELES, CA 90071-1448				
EXAMINER JACKSON, BRANDON LEE				
ART UNIT		PAPER NUMBER		
3772				
MAIL DATE		DELIVERY MODE		
09/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/506,474

Applicant(s)

GILMOUR, ROBERT FARRER

Examiner

BRANDON JACKSON

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 6-11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4, 6-11, and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to amendments/arguments filed 8/22/2008. Currently, claims 4, 6-11, and 14 are pending in the instant application.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/22/2008 has been entered.

Response to Arguments

Applicant's arguments filed 8/22/2008 have been fully considered but they are not persuasive. Applicant argues the Gilmour device does not meet the limitations of having at least one set of apertures and a slot. However, the Gilmour device could be interpreted as having a set of apertures and a slot if one interprets the three of the openings (34) as set of apertures and the fourth opening (34) as a slot. Applicant fails to disclose the orientation of the set of apertures and the slot relative to one another on the walker. Applicant argues the need of pressure in the Plath device to hold the smaller portion of the device in place. However, Gilmour chafe would have pressure applied to it because of the straps pulling of the chafe. Therefore, there would be

motivation to modify the Gilmour aperture to have the shape, as taught by Plath, in order to better secure the chafe to the walker. Applicant argues the Coy device does not teach a saw-toothed patten, but merely a series of notches. However, a series of notches could be interpreted as a saw-toothed pattern, because a saw-toothed pattern is merely a series of consecutive peaks and valleys, which the Coy device teaches. Moreover, the straps do not pass through the slots (34), therefore the strap would not be affected by the saw-tooth pattern.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmour (U.S. Patent 6,155,998) in view of Plath (U.S. Patent 5,311,972). Gilmour discloses a chafe (30) comprising a slot (37) therein, a stud (35), and a connection

means (33) connecting the stud (35) and the slot (37). The connection means (33), slot (37), and stud (35) are formed of a unitary construction free from the frame (1).

Moreover, it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). The stud (35) has an enlarged head. A walker frame (1) has a at least one set of apertures (34) a slot (34), wherein each set has at least two apertures therein (fig. 1), formed to allow the stud (35) to pass through to be held in the aperture (34) and released therefrom (fig. 1). Further, Gilmour discloses a walker having a set of apertures (upper 31) and a slot (lower 31) corresponding to each aperture (upper 31). Gilmour fails to disclose that the aperture has a wider lower part and a narrower upper end so the stud can pass through the lower part head first and retained by the upper end. However, Plath teaches a stud (19) that passes head first through the lower part (32) and is secured by a narrower upper end (33). It would have been obvious to one of ordinary skill in the art to modify the chafe to have lower apertures of the walker frame having the Plath design, to secure the chafe to the frame because it holds the chafe in place so it does not move during ambulation, resulting in movement of the foot within the walker; and to allow easy fastening and releasing of the straps.

Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmour (U.S. Patent 6,155,998) and Plath (U.S. Patent 5,311,972) in view of Coy (U.S. Patent 5,836,626). Gilmour/Plath substantially disclose the claimed invention, see

claim 6-8 and 9-10 rejections above; Gilmour/Plath fails to disclose a walker having a slot wherein the upper edge is a saw tooth pattern that can retain the stud head. Coy teaches a slot (22) with an upper edge (21) having a saw toothed pattern. It would have been obvious to modify the Gilmour/Plath walker to include a slot (lower 31) of Gilmour/Plath in a saw toothed pattern as taught by Coy because is an effective way to quickly secure a device that fits between the notches of the saw toothed pattern.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772